

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Joe & Andrea Bevington, Petitioners-Appellants, v. Taylor County Board of Review, Respondent-Appellee.	ORDER Docket Nos. 12-87-0539 12-87-0540 12-87-0541 Parcel No. 0502400401000
---	--

On May 3, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants Joe and Andrea Bevington were self-represented and submitted evidence in support of their petition. Taylor County Attorney Clinton L. Spurrier is counsel for the Board of Review and represented it at hearing. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Joe and Andrea Bevington, owners of agriculturally classified property located at 2085 110th Street, Corning, Iowa, appeal from the Taylor County Board of Review decisions reassessing their property. The Bevingtons have appealed three years of assessments: 2010; 2011; and 2012; all during the 2012 Board of Review protest period.

2010 Assessment Protest & Appeal

In January 2010, the real estate was valued at \$311,840.¹

According to the 2009 property record card, the subject property is a one-and-one-half story, frame dwelling with 3541 square feet of above-grade living area, a full basement, a 488 square-foot open porch, and a 675 square-foot attached garage built in 2009. The property listing included five bath fixtures. The dwelling has a good quality grade (3+10) and is in normal condition. Since construction was not complete, the record showed a 15% adjustment to reflect a partial assessment. The improvement is situated on 28.060 acres site in rural Holt Township.

Bevingtons protested the 2010 assessment to the Board of Review in 2012 on the ground that there is an error in the assessment under Iowa Code section 441.37(2); they had not fully paid the taxes owed on this assessment. The Board of Review denied the protest.

Bevingtons then appealed to this Board reasserting their claim. They claim their property is a one-story dwelling with 1939 square feet of living area, not a one-and-one-half story dwelling with 3541 square feet of living area; and they claim the number of plumbing fixtures incorrectly included one extra sink. Additionally, in their opinion, construction was only 68% complete, rather than 85% complete at the time of the assessment. They contend \$223,637² was the actual value and a fair assessment of the property as of January 1, 2010.

2011 Assessment Protest & Appeal

In January 2011, the real estate was valued at \$247,970. Bevingtons renewed their allegation under section 441.37(2) that the dwelling was only a one story; was only 1939 square feet of living area; and the number of fixtures was incorrect. They also claimed the 18 linear feet of brick veneer listed on the 2011 assessment was actually less costly simulated stone. They asserted \$189,885 was

¹ The improvement value also included an agricultural building and dwelling that were removed after the assessment date.

² Bevingtons originally claim \$205,036 was the actual value of the property on their 2010 petition, but revised the amount at hearing.

the actual value and a fair assessment of the property for 2011. The Board of Review granted the protest, in part, by reducing the total assessment to \$219,080. The property record card was subsequently changed listing a one-story, frame dwelling, changing the square feet of living area, eliminating the extra sink, and switching the toilet room to a water closet on the property record card report.

Bevingtons then appealed to this Board. They claimed \$189,885 was the actual value and fair assessment of the property as of January 1, 2011.

2012 Assessment Protest & Appeal

In January 2012, the real estate was valued at \$251,920. This was a change in value from the previous assessment year. Bevingtons alleged the same errors in the 2012 protest as in the 2011 protest. The Board of Review again granted the protest, in part, by reducing the total assessment to \$219,080.

Bevington's then appealed to this Board. Similar to the 2011 protest, they claimed \$189,885, was the actual value and a fair assessment of the property as of January 1, 2012.

Evidence & Testimony

Andrea Bevington testified that construction of the dwelling began in late summer of 2009 and it was only 68% complete as of the January 2010 assessment date. She bases this percentage on her own calculations using a worksheet obtained from the assessor's office. Bevington testified they did not pay their 2010, 2011, or 2012 taxes in full to preserve their claims under section 441.37(2).

Joe Bevington testified he believes the assessor's error in listing the house style and square footage of living area are math errors. He also reported the assessor inspected the property in December 2009 and could see there was no second floor. He stated the trim, painting, and cabinetry were done after January 1, 2010. Further, Joe believes the multiplier used by the assessor to recalculate the 2010 assessment was incorrect because other similarly graded homes have a 1.210

multiplier whereas the assessor applied a 1.42 multiplier in their corrected cost report. He also testified that the \$72 per linear foot was the cost for authentic brick veneer, while they had simulated stone which should only cost \$57 per linear foot according to the Iowa Department of Revenue's 1998 REAL PROPERTY APPRAISAL MANUAL.

Assessor Sharon Dalton testified on behalf of the Board of Review. Dalton reported the 2010 and 2011 assessments were completed using the 1998 MANUAL, whereas the 2012 assessment was completed using the 2008 MANUAL. She indicated the quality grade multiplier was 1.42 in the 1998 MANUAL and 1.21 in the 2008 MANUAL. Once the office computer system was changed over to the new 2008 MANUAL, she was unable to revert to the older version to revise the Bevingtons' older property record card. This required manually adjusting the older cost report and was the reason Bevingtons' report showed a different multiplier than similarly-graded properties assessed in 2012. Dalton also testified that due to a revaluation in 2011, all residential properties, including agricultural dwellings, were increased by 20% to be in line with the sales ratio study. The 2012 increase resulted from converting to the 2008 MANUAL for residential properties. Dalton conceded the \$72 per linear foot cost of brick veneer should have been reduced to the \$57 per linear foot cost of simulated stone.

Dalton acknowledges the error in listing the style of house, and subsequent miscalculations in the living area. She also estimated 85% completion as of the January 1, 2010, assessment based on her inspection of the property in December 2009. She characterizes these as "judgment" errors that could have been corrected earlier if timely protests had been filed with the Board of Review. Dalton reported assessment notices were mailed to the Bevingtons in each of the years in issue. She testified when the Bevingtons first came to her office in April 16, 2012, to report the errors they identified, she made the changes to the 2012 assessment.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

2010 and 2011 Assessment Appeals

The Bevingtons protested their 2010 and 2011 assessments in 2012 under Iowa Code section 441.37(2). Section 441.37(2) provides:

2.
 - a. A property owner or aggrieved taxpayer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in which the taxes have not been fully paid or otherwise legally discharged.
 - b. Upon the determination of the board that a clerical or mathematical error has been made the board shall take appropriate action to correct the error and notify the county auditor of the change in the assessment as a result of the error and the county auditor shall make the correction in the assessment and the tax list in the same manner as provided in section 443.6.
 - c. The board shall not correct an error resulting from a property owner's or taxpayer's inaccuracy in reporting or failure to comply with section 441.19.

Essentially, section 441.37(2)(a-c) extends permits protesting prior years' assessment in which the taxes have not been fully paid or otherwise legally discharged, but limits the grounds only to clerical or mathematical errors. Iowa Administrative Code 701-71.20(4)(a).

In *American Legion, Hanford Post 5 v. Cedar Rapids Board of Review*, 646 N.W.2d 433, 439 (Iowa 2002), the Iowa Supreme Court held that a clerical error is one of writing or copying, in contrast to an error of judgment or law affecting the assessor's determination of the proper assessment. A writing or copying error "results in the recording of an assessment figure that was not intended by the assessor." *Id.* Black's *Law Dictionary* 252 (6th ed.1990) defines "clerical error" as "generally a mistake in writing or copying." An error in judgment or a mistake of law is an error of substance; it is not a *clerical* error. *Id.*

While this Board appreciates Bevingtons' thorough and organized presentation of their evidence, we find the type of errors they identified including percentage of completion, square feet of living area, and number of bath fixtures, were the result of errors in judgment and do not fall within the definition of error that allows protests for prior year assessments. The assessor intended to record these figures on the subject property's record card and did not merely make a mistake. *American*

Legion, Hanford Post 5, 646 N.W.2d at 438. Therefore, the preponderance of the evidence does not support a finding that Bevingtons' 2010 and 2011 assessments can be changed under the claim set forth in section 441.37(2).

2012 Assessment Appeal

Bevingtons' 2012 appeal is governed by section 441.37(1)(a)(4) and is not limited solely to clerical or mathematical errors. The plain language of section 441.37(1)(a)(4), on which the Bevingtons rest their 2012 claim, allows a protest on the ground "[t]hat here is an error in the assessment." §441.21(1)(a)(4). The administrative rule interpreting this section indicates while "[a]n error in the assessment *would most probably* involve erroneous mathematical computations or errors in listing the property[,] [t]he improper classification of property also constitutes an error in the assessment." Iowa Administrative r. 701-71.20(4)(b)(4) (2008) (emphasis added). This language suggests that other errors may constitute grounds for appeal under section 441.37(1)(a)(4). The evidence does not show the assessor treated similar properties differently regarding grade multipliers. The assessor used the same grade multiplier on Bevington's property as on other similarly graded properties in the years of appeal. The evidence does, however, show listing errors regarding the square feet of living area, the number of bath fixtures, and pricing of the stone veneer. The errors in square feet of living area and the bath fixture count were corrected by the Board of Review, and the assessment was adjusted accordingly. Bevingtons' claim of error regarding the cost of the simulated stone veneer must still be corrected. At this Board's request, the Board of Review provided a corrected value reflecting this change. The change results in a \$207 decrease to the subject property's improvement value to \$194,800.

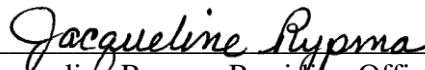
Viewing the evidence as a whole, we determine that the preponderance of the evidence does not support Bevingtons' claim of error in the 2010 and 2011 assessment years. The Appeal Board, therefore, affirms these two assessments. The preponderance of evidence, however, does support

Bevingtons' claim of error in the 2012 assessment, and the Appeal Board determines the property's assessed value as of January 1, 2012, is \$218,690, representing the \$22,040 in land value, \$1850 in agricultural building value, and \$194,800 in dwelling value.

THE APPEAL BOARD ORDERS the January 1, 2010 and January 1, 2011, assessments as determined by the Taylor County Board of Review are affirmed.

THE APPEAL BOARD ORDERS the January 1, 2012, assessment as determined by the Taylor County Board of Review is modified as set forth herein.

Dated this 24th day of June 2013.


Jacqueline Rypma, Presiding Officer



Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:
Joe & Andrea Bevington
2085 110th Street
Corning, IA 50841
APPELLANTS

Clinton L. Spurrier
Taylor County Attorney
405 Jefferson Street, Suite 6A
Bedford, IA 50833
ATTORNEY FOR APPELLEE

Bonny Baker
Taylor County Auditor
405 Jefferson
Bedford, IA 50833
AUDITOR

Certificate of Service			
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>June 24, 2013</u> .			
By:	<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX	
	<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> Overnight Courier	
	<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Other	
Signature 			
Signature _____			